Supreme Court, U.S.
FILED

961071 JAN 6 1997

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No.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1996

WALKER LABRUNERIE,
Petitioner,

v.

UNITED STATES OF AMERICA
Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

I. RULE 11(e)(6)(D) OF THE FEDERAL RULES OF CRIMINAL PROCEDURE PROVIDES THAT STATEMENTS MADE IN THE COURSE OF PLEA DISCUSSIONS WITH AN ATTORNEY FOR THE GOVERNMENT ARE INADMISSIBLE IN A SUBSEQUENT PROCEEDING EVEN IF A GUILTY PLEA DID NOT RESULT. THE QUESTION PRESENTED IS WHETHER STATEMENTS MADE BY THE DEFENDANT TO FEDERAL AGENTS AND A UNITED STATES ATTORNEY AFTER REPRESENTATIONS WERE MADE TO THE DEFENDANT THAT THE GOVERNMENT WAS SEEKING HIS COOPERATION AND HOW COOPERATION MIGHT IMPACT HIS POTENTIAL SENTENCE ARE INADMISSIBLE AS PLEA DISCUSSIONS UNDER RULE 11(e)(6)(D) OF THE FEDERAL RULES OF CRIMINAL PROCEDURE.

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ON PETITION FOR WRIT OF CERTIORARI
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PETITION FOR A WRIT OF CERTIORARI

Walker LaBrunerie petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eighth Circuit in this case.

OPINION BELOW

The opinion of the court of appeals (App. at 1a-8a) is reported at 91 F.3d 1193.

JURISDICTION

The judgment of the court of appeals was entered on August 12, 1996. Mr. LaBrunerie's petition for rehearing was denied on October 8, 1996. App. at 9b. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

STATUTORY PROVISION INVOLVED

Rule 11(e)(6)(D) of the Federal Rules of Criminal Procedure provides as follows:

> Except as otherwise provided in this paragraph, evidence of the following is not, in any civil or criminal proceeding, admissible against the defendant who made the plea or was a participant in the plea discussions: (A) a plea of guilty which was later withdrawn; (B) a plea of nolo contendere; (C) any statement made in the course of any proceedings under this rule regarding either of the foregoing pleas; or (D) any statement made in the course of plea discussions with an attorney for the government which does not result in a plea of guilty.

STATEMENT

In an ongoing investigation of public corruption in the local government of Kansas City, Missouri, federal agents initiated contact with the defendant, Walker LaBrunerie, to attempt to recruit him as a cooperating witness. At approximately 8:00 a.m. on September 15, 1994, Agents Tom

Williams and Mark Davis appeared unannounced and uninvited at LaBrunerie's residence in North Kansas City, Missouri. The agents informed LaBrunerie about the general nature of their investigation and also advised him that he was a target. The agents then confronted LaBrunerie with a flow chart that detailed various transactions he was involved in and the numerous potential federal charges that were being contemplated. The agents informed Mr. LaBrunerie that Kansas City Councilman Michael Hernandez was also a target of the investigation; however, the agents failed to inform him that Hernandez had already been working with the government as a cooperating witness in the investigation. Indeed, the agents testified at later court proceedings that they did not want Mr. LaBrunerie to know about Mr. Hernandez's existing cooperation and that they hoped Mr. LaBrunerie would not contact an attorney. App. at 1a-3a.

The federal agents then explained to Mr. LaBrunerie that the government was seeking his cooperation and they were present with the full knowledge and approval of Assistant United States Attorney Paul Becker. After the various discussions about potential cooperation, LaBrunerie did make some statements to the agents about his involvement in the alleged transactions. As the agents left LaBrunerie's home, Agent Williams advised him that Assistant United States Attorney Becker was prepared to meet with him to further explore and explain the possible effect of his potential cooperation. LaBrunerie agreed to meet with Becker at a time to be scheduled by the agents. App. at 1a-3a.

Later on this same morning, Agent Williams contacted LaBrunerie by telephone and instructed him to travel to a motel

for a meeting with Mr. Becker. Upon his arrival at the motel parking lot around 10:00 a.m., LaBrunerie was escorted into the room by Agents Williams and Davis. Also present were Agents Robert Burnham and Jonathan Tucker, along with Assistant United States Attorney Paul Becker. Agent Williams testified that Mr. Becker was present so the parties could have access to the government lawyer who would negotiate the case. App. at 1a-3a.

After introductions were made, Mr. Becker explained to Mr. LaBrunerie the nature of the investigation and in a general nature the benefits of cooperating with the government. LaBrunerie was informed that he was a target of the investigation and his cooperation could affect how any potential charges may be disposed. LaBrunerie was again confronted with the flow chart that detailed the potential charges he faced. According to the testimony of Agent Williams, Mr. Becker then discussed calculations under the sentencing guidelines and how cooperation could impact an ultimate sentence under the Guidelines. App. at 3a. Mr. Becker did not specifically recall the reference to the Sentencing Guidelines calculations, but did acknowledge that Agent Williams' memorandum of the LaBrunerie interview referenced such a conversation. After the representations were made regarding cooperation, LaBrunerie discussed his involvement in the alleged transactions with Becker and the agents present.

LaBrunerie was eventually indicted in an eleven count indictment filed on July 25, 1995, charging various federal offenses relating to bribery, money laundering, and conspiracy to commit bribery and money laundering. Mr. LaBrunerie plead not guilty to all original charges. Further, he has not denied

involvement in the alleged transactions, but rather has denied that he acted with the requisite criminal intent. Numerous pre-trial motions were filed by LaBrunerie and co-defendants.[1] One such motion filed by LaBrunerie was a motion to suppress the statements made to the agents at the 8:00 a.m. meeting and the statements made to the agents and Mr. Becker at the 10:00 a.m. meeting on the morning of September 15, 1994. The defendant initially challenged the admissibility of these statements on separate grounds. It was alleged that the defendant's statements were extracted during a custodial interrogation in violation of *Miranda v. Arizona* and that the statements were obtained involuntarily by the implications made by the agents and Mr. Becker that LaBrunerie's cooperation would thwart his own prosecution. App. at 4a.

An evidentiary hearing on the motion to suppress was held before the Honorable United States Magistrate Robert Larsen on October 2, 1995. During the course of this hearing, the government responded that the statements made by LaBrunerie were voluntarily made because neither the agents nor Mr. Becker had made any implied promises to the defendant that he would not be prosecuted if he cooperated. Agent Williams testified in detail that the discussions he had with LaBrunerie at the 8:00 a.m. meeting indicated that he would be required to plead guilty to some charge, but that cooperation could impact a sentence under the Sentencing Guidelines.

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[1] It should be noted that the district court dismissed all of the money laundering charges for failure to state an offense, as well as the portion of the conspiracy counts that related to money laundering. Additionally, the court ordered the government to elect between the conspiracy to commit bribery or the substantive bribery count on the grounds of multiplicity.

Williams also gave detailed testimony, supported by an FBI 302 report he had earlier prepared regarding these meetings, about the discussions Mr. Becker had with the defendant in the motel room about cooperation, its benefits, and the way cooperation could ultimately affect what charges were brought and how any sentence calculated under the Sentencing Guidelines could be impacted by cooperation. Due to the government's response that there were no implied promises of "no prosecution," Magistrate Judge Larsen made inquiry into the issue of whether the statements were plea discussions under Rule 11(e)(6)(D). App. at 4a-5a.

The parties were invited by Magistrate Judge Larsen to make further witness examination and argument regarding the Rule 11 issue. No limitation of any kind was placed on the parties regarding the presentation of evidence or argument on the Rule 11 issue. In fact, the parties filed supplemental written briefs with the magistrate regarding this issue. Magistrate Larsen, in his report and recommendation to the district court, concluded that the statements made by LaBrunerie at the 10:00 a.m. meeting with Becker and the agents should be inadmissible as the product of plea discussions under Rule 11(e)(6)(D). App. at 4a-5a.

Although not required or even customary, United States District Judge Joseph Stevens conducted a second evidentiary hearing on October 24, 1995, regarding the admissibility of the statements made by LaBrunerie at the 10:00 a.m. meeting. At this second evidentiary hearing, both Agent Williams and Mr. Becker testified for the government. After this hearing, the district judge adopted the report and recommendation of Magistrate Judge Larsen and concluded that the statements

made were the product of plea discussions under Rule 11(e)(6)(D). App. at 4a-5a.

The United States sought interlocutory appellate review of the district court's decision pursuant to 18 U.S.C. § 3731. On appellate review, the United States Court of Appeals for the Eighth Circuit reversed the findings made by the Magistrate Judge and the District Court Judge, by holding that the statements made by LaBrunerie were not "plea discussions" within the meaning of Rule 11(e)(6)(D). App. at 7a-8a. The court of appeals determined that LaBrunerie offered his statements in the hopes of bettering his situation down the road. App. at 7a. The Eighth Circuit held that normal plea discussion events did not occur because: 1) no specific plea offer was made; 2) no deadline to plead was imposed; 3) no offer to drop specific charges was made; 4) no discussion of the Sentencing Guidelines for the purpose of negotiating a plea occurred; and 5) no defense attorney was retained. App. at 8a.

REASONS FOR GRANTING THE PETITION

The provisions of Rule 11 involve a significant aspect of the criminal justice system. Plea discussions and pre-indictment conferences between federal prosecutors and defendants in an attempt to resolve potential criminal charges are not only commonplace, but serve as an extremely valuable and efficient way to resolve numerous federal cases without the need for prolonged or unnecessary criminal litigation. Furthermore, the process of plea negotiations has long been recognized by this Court as an important and desired aspect of the criminal justice system. *See Santobello v. New York*, 404 U.S. 257, 260-61 (1971) ("Disposition of charges after plea discussions is not

only an essential part of the process but a highly desirable part for many reasons.").

To ensure that the plea bargaining process is fair and to encourage open and frank plea discussions, Rule 11 of the Federal Rules of Criminal Procedure was promulgated. Rule 11(e)(6)(D) provides that statements made in the course of plea discussions with an attorney for the government which do not ultimately result in a plea of guilty are not admissible in any civil or criminal proceeding against the defendant. Rule 410 of the Federal Rules of Evidence contains similar provisions. These provisions promote and protect free plea dialogue between the accused and the government and encourage frank plea discussions. *United States v. Robertson*, 582 F.2d 1356 (2d Cir. 1978); *United States v. Grant*, 622 F.2d 308, 312 (8th Cir. 1980). In addition, the policy underlying Rule 11 is to allow a defendant or his counsel to freely negotiate without fear that statements will later be used against him. *United States v. Lloyd*, 43 F.3d 1183, 1186 (8th Cir. 1994); *United States v. Knight*, 867 F.2d 1285, 1288 (11th Cir.), *cert. denied*, 493 U.S. 846 (1989). Rule 11 is not limited to discussions between a government attorney and defense counsel.

In analyzing statements made in a Rule 11 situation, a district court must necessarily determine whether the statements were made in the course of plea discussions. *See Lloyd*, 43 F.3d at 1186. Courts generally make this inquiry on a case-by-case basis, based on the totality of the surrounding circumstances. *See id.*; *see also United States v. Grant*, 622 F.2d 308, 312 (8th Cir. 1980).

In its decision below, the Eighth Circuit concluded that normal plea discussion events did not occur in the present case because no specific plea offer was made, no deadline to plead was imposed, no specific offer to drop charges was made, no defense attorney was retained to assist in the formal plea bargaining process, and no specific discussion of the Sentencing Guidelines for the purpose of negotiating a plea occurred. (App. at 8a). However, the Eighth Circuit's list of elements used to determine whether plea discussions occurred is overly narrow and a dangerously restrictive definition of plea discussions as contemplated by the spirit and policy of Rule 11. Further, the decision conflicts with the holdings of several other federal courts that have defined plea discussions in a much broader fashion. *See, e.g., United States v. Washington*, 614 F. Supp. 144 (D. Pa. 1985), *aff'd.* 791 F.2d 923 (3rd Cir. 1986), *cert. denied,* 479 U.S. 841 (1988) (communications from a defendant to a prosecutor should, in the absence of a prosecutorial disclaimer of intent to bargain, be presumed inadmissible); *United States v. Geders*, 566 F.2d 1227, 1230 (5th Cir. 1978), *cert. denied*, 441 U.S. 922 (1979) (rationale supporting liberal interpretation of Rule 11 is to prevent plea bargaining from being used as a trap for the unwary); *United States v. Boltz*, 663 F. Supp. 956 (D. Alaska 1987).

Plea discussions under Rule 11 contemplate something much broader than discussing a specific bargain to a specific charge. *Boltz*, 663 F. Supp. at 959-60. Rule 11 also applies to offers of immunity, dismissal of charges, promises of no prosecution, as well as offers to allow pleas to lesser or related offenses. *Id.* Thus, these federal courts have recognized that a defendant attempting to cooperate with the government may "charge bargain" for a complete or partial reduction of the

charges or a modification of the charges to lesser or related offenses. Thus, where discussions clearly relate to the ultimate disposition of threatened criminal charges, the protections of Rule 11 are applicable. *See Boltz*, 663 F. Supp. at 960. The Eighth Circuit's narrow view of "plea discussions" thus conflicts with federal decisions from other courts. This narrow view of "plea discussions" under Rule 11 will undoubtedly have a chilling effect on discussions between the prosecution and the defense in an attempt to resolve matters without litigation.

The Eighth Circuit's reliance on *United States v. Hare*, 49 F.3d 447 (8th Cir.), *cert. denied* 116 S. Ct. 211 (1995), is also misplaced. *See* App. at 7a-8a. *Hare* involved a situation where agents arrived at the defendant's business and the defendant immediately and voluntarily produced a signed confession. The defendant then accompanied the agents to the United States Attorney's Office, where he once again voluntarily described his role in criminal conduct. After his voluntary disclosure, the parties discussed in general terms the Sentencing Guidelines. The Eighth Circuit correctly held that statements voluntarily offered in the hopes of leniency cannot be considered made in the course of plea discussions under Rule 11. *Hare*, 49 F.3d at 450.

The *Hare* decision is factually distinguishable from the present case. In this case, LaBrunerie did not immediately volunteer statements to the agents and the United States Attorney in the hopes of receiving some type of unarticulated leniency. Rather, LaBrunerie was confronted with various potential charges that he faced and had represented to him how cooperation can impact his sentence. Only after a fifteen minute discussion about cooperation did LaBrunerie discuss the case.

Further, the defendant in *Hare* never had cooperation explained, nor was he confronted with potential charges and specifically asked for his cooperation in an ongoing investigation.[2] Thus, the Eighth Circuit's reliance on the *Hare* decision is misplaced in its opinion below.

In addition, the decision below seems to conflict with other provisions of Rule 11. For example, Rule 11(e)(1) describes plea agreement procedures in general: "The attorney for the government and the attorney for the defendant or the defendant acting pro se may engage in discussions *with a view toward reaching an agreement* that, upon the entering of a plea of guilty . . . the attorney for the government will do any of the following . . . . Rule 11(e)(1) (emphasis added). This provision suggests a broader view of "plea discussions" where the parties have discussions "with a view toward reaching" some ultimate specific plea agreement.

In this case, the government clearly approached Mr. LaBrunerie about enlisting his involvement as a cooperating witness. LaBrunerie did not immediately volunteer statements or information in the hopes of leniency. Instead, the agents and the United States Attorney advised LaBrunerie that he was a target and that cooperation could impact what ultimate sentence he would receive. Agent Williams clearly recalled that Mr. Becker also discussed with LaBrunerie how cooperation could impact what charges were eventually filed against the defendant. Agent Williams acknowledged at the evidentiary hearings that

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[2] Interestingly, the *Hare* case originated from Judge Stevens' court as well and was factually distinguished from the present case by Judge Stevens on the record at the second evidentiary hearing.

the discussions of cooperation absolutely implied that there would be an ultimate guilty plea by LaBrunerie to some charge. Thus, these discussions involved how the threatened criminal charges may ultimately be disposed of, which are "plea discussions" under Rule 11(e)(6)(D).

Only after the representations were made to LaBrunerie regarding the benefits of cooperation did he make statements to the agents and Mr. Becker in his attempt to cooperate with the authorities. After soliciting his assistance, the government has now indicted Mr. LaBrunerie and will attempt to use his statements made in a good faith attempt to cooperate with the government against him in the criminal trial. Rule 11 was promulgated to address this exact situation and to protect statements made in an effort to resolve criminal charges from being used against the accused in a subsequent criminal proceeding:

> The government's conduct of telling a prospective defendant that it wants to discuss "cooperation" with him . . .and then using the defendant's part of the discussion against him is totally repugnant, as the drafters of Rule 410 realized. Indeed, this conduct is so fundamentally unfair that it probably constitutes a violation of Fifth Amendment substantive due process . . . [I]t is shameful for the government to penalize an individual for statements made in a good faith attempt to overtures initiated by the government.

United States v. Sikora, 635 F.2d 1175, 1178 (6th Cir. 1980) (Wiseman, J., concurring in part), *cert. denied*, 449 U.S. 993 (1980). The statements made by LaBrunerie should be suppressed as inadmissible plea discussions under Rule 11(e)(6)(D) of the Federal Rules of Criminal Procedure.

CONCLUSION

For the reasons set forth herein, the Petition for a Writ of Certiorari should be granted.

Respectfully submitted,

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APPENDIX

APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No. 95-4102

United States of America,	*	
	*	
Plaintiff/Appellant,	*	Appeal from the United
	*	States
	*	District Court for the
	*	Western
v.	*	District of Missouri.
	*	
Mark A. Morgan,	*	
	*	
Defendant,	*	
	*	
Walker LaBrunerie,	*	
	*	
Defendant/Appellee,	*	
	*	
Charles J. Weber,	*	
	*	
Defendant.	*	

Submitted: April 9, 1996
Filed: August 12, 1996

Before BEAM and MURPHY, Circuit Judges, and BURNS,* District Judge.

BEAM, Circuit Judge.

After determining that Walker LaBrunerie's inculpatory statement was given in the course of plea discussions, the district court suppressed the statement under Rule 11(e)(6)(D) of the Federal Rules of Criminal Procedure. The government appeals. We reverse.

I. BACKGROUND

This appeal involves a troublesome situation in which law enforcement agents sought a suspect's cooperation and are now attempting to use his statements against him. The Federal Bureau of Investigation (FBI) and the Internal Revenue Service (IRS) conducted an investigation into corruption in the city government of Kansas City (Missouri). During the investigation, LaBrunerie came under suspicion for, among other things, bribing city council member Michael Hernandez to obtain favorable zoning action. Unknown to LaBrunerie, Hernandez had been actively cooperating in the investigation.

At some point during the investigation, the FBI needed the cooperation of another suspect. LaBrunerie was selected for the task and approached at his Kansas City home at approximately 8:00 a.m. on September 15, 1994. The reportedly cordial meeting, between LaBrunerie and two agents, lasted for roughly thirty minutes. LaBrunerie was informed of

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*The HONORABLE JAMES M. BURNS, United States District Judge for the District of Oregon, sitting by designation.

the criminal charges he could face,[1] the strong possibility of jail time, and the importance of his cooperation. After LaBrunerie briefly explained his role in the offenses, the agents requested his further cooperation and asked him to attend another meeting later that same morning. Stating that he had no option other than cooperating with the investigators, LaBrunerie agreed to attend the meeting.

LaBrunerie drove to a hotel several miles from his home to attend the second meeting. It began around 10:00 a.m. and lasted approximately three hours. Several FBI agents were present, as was Assistant United States Attorney Paul Becker. Following introductions, Becker spent approximately the first fifteen minutes of the meeting explaining the charges LaBrunerie could face, the effect of his cooperation on his sentence, and, in general terms, the federal sentencing guidelines. At this meeting, LaBrunerie incriminated himself by giving a detailed explanation of his role in the offense.

LaBrunerie attended both meetings without obtaining counsel. Indeed, the FBI agents admittedly discouraged LaBrunerie from obtaining counsel and did not read him his *Miranda* rights. The agents informed LaBrunerie that although he was a target of the investigation, he was free to leave the meetings at any time and was not under arrest. LaBrunerie was further instructed not to tell anyone about the meetings because public knowledge of his cooperation would lessen his value as

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[1] Those charges included bribery, money laundering, income tax evasion, mail fraud, and fraud against the government.

an informant.[2]

For various reasons, LaBrunerie's cooperation with the investigation disintegrated. After LaBrunerie informed others of his cooperation with law enforcement, the FBI effectively dropped him as a source. He was subsequently indicted on various charges involving the bribery of councilman Hernandez. LaBrunerie then moved to suppress his September 15th statements.

At a suppression hearing before the magistrate judge, both LaBrunerie and the prosecution focused on the issues of whether the FBI's questioning of LaBrunerie was custodial and whether his statements were voluntarily given. The magistrate judge found that the statement made at the 8:00 meeting was admissible as voluntarily given during non-custodial questioning. This appeal does not involve that ruling. At the end of that suppression hearing, however, the magistrate judge *sua sponte* raised the issue of whether the 10:00 statement was given in the course of plea discussions and was, thus, inadmissible under Federal Rule of Criminal Procedure 11(e)(6)(D) (Rule 11). Neither side had considered or argued this point.

The magistrate judge found the 10:00 statement was made in the course of plea discussions and recommended that it be suppressed. The district court held a hearing specifically addressing this issue and entered an order suppressing the 10:00 statement. The government alleges that this ruling was

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[2] The FBI agents wanted LaBrunerie to work undercover for them. This work was to entail, among other things, LaBrunerie's taping of conversations regarding the bribery schemes. If LaBrunerie's cohorts were made aware of his cooperation with he FBI, they would likely not freely discuss those matters with him.

erroneous because the 10:00 statement by LaBrunerie was merely offered in the hope of obtaining leniency in sentencing and, therefore, is admissible evidence.

II. DISCUSSION

The district court's ultimate determination that LaBrunerie's 10:00 statement was given in the course of plea discussions is a mixed question of law and fact. *See Ornelas v. United States*, 116 S. Ct. 1657, 1662 (1996) (holding district court's determination of whether probable cause existed for search, requiring application of historical facts to law, is mixed question of law and fact and should be reviewed de novo). On appeal, therefore, we review the determination de novo.[3] *See id.* To determine whether LaBrunerie's statement was given in the course of plea discussions, we look to the specific facts and examine the totality of the circumstances surrounding the statement. *United States v. Grant*, 622 F.2d 308, 312 (8th Cir. 1980).

The essential purpose of Rule 11, upon which the

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[3] In so holding, we recognize the contrary Eighth Circuit cases cited by the appellees for the proposition that the district court's denial of a motion to suppress is reviewed under a clearly erroneous standard. *See, e.g., United States v. Hare*, 49 F.3d 447, 450 (8th Cir.), *cert. denied*, 116 S. Ct. 211 (1995); *United States v. Lloyd*, 43 F.3d 1183, 1186 (8th Cir. 1994). Initially, we note that those cases predate the United States Supreme Court's decision in *Ornelas*. Next, we note that despite stating the appropriate level of review was one of clear error, a closer reading of the cases shows that the court proceeded to review "the totality of the circumstances." *Hare*, 49 F.3d at 451; *Lloyd*, 43 F.3d at 1186. In other words, the court's actual review much more closely resembled a de novo review than it did a clearly erroneous review. In any event, we would reach the same result using either standard of review, because on these facts the district court committed clear error by determining LaBrunerie's 10:00 statement was made in the course of plea discussions.

district court based its suppression order, is promoting active plea negotiations and encouraging "frank discussions" in plea bargaining. *Rachlin v. United States*, 723 F.2d 1373, 1376 (8th Cir. 1983). The rule provides, in relevant part:

> [E]vidence of the following is not, in any civil or criminal proceeding, admissible against the defendant who made the plea or was a participant in the plea discussions:
>
> . . . .
>
> (D) any statement made in the course of plea discussions with an attorney for the government which do not result in a plea of guilty or which result in a plea of guilty later withdrawn.

Fed. R. Crim. P. 11(e)(6)(D). By its plain language, the rule makes it clear that a statement must be given "in the course of plea discussions" to come within the rule's exclusionary language. *See, e.g., United States v. Robertson*, 582 F.2d 1356, 1367 (5th Cir. 1978) (court must distinguish between those discussions in which "the accused was merely making an admission and those discussions in which the accused was seeking to negotiate a plea agreement"). Therefore, we must determine whether LaBrunerie's 10:00 statement was given "in the course of plea discussions" within the meaning of Rule 11.

This case is indistinguishable from *United States v. Hare*, 49 F.3d 447 (8th Cir.), *cert. denied*, 116 S. Ct. 211 (1995). In *Hare*, we agreed with the district court that statements should not be suppressed because they were not

given in the course of plea discussions. *Id.* at 449. The facts of this case are very similar. In both cases, the defendants were attorneys; here, LaBrunerie is a graduate of Harvard Law School. Although both LaBrunerie and Hare were originally contacted by FBI agents who lacked the authority to engage in plea bargaining, they both voluntarily confessed their involvement in criminal activities to those agents. Both initial meetings were followed by second meetings, at removed locations, to which the defendants voluntarily journeyed. At both of these second encounters, the then-present Assistant United States Attorneys engaged in generalized discussions of the sentencing guidelines and the possible effect of cooperation on the defendants' respective sentences.

In neither the present case nor the *Hare* case did the Assistant United States Attorneys discuss a possible plea bargain or in any way encourage arrival at a plea bargain before the defendants made the incriminating statements. In fact, plea bargains were unattractive options for the FBI because the attendant publicity would negate the effectiveness of the suspects' cooperation. Both LaBrunerie and Hare offered their cooperation in the hope of bettering their situation somewhere down the road. As we stated in *Hare*:

> [The defendant's] statements were offered unconditionally in an effort to cooperate. Perhaps [the defendant] was hopeful of improving his situation and eventually gaining a motion for substantial assistance at sentencing, but the statements cannot be said to have been made in the course of plea discussions within the meaning of the exclusionary rules because *no plea bargain was offered or even contemplated at that point.*

Id. at 451 (emphasis added).

Simply put, normal plea discussion events did not occur in the present case: (1) no specific plea offer was made; (2) no deadline to plead was imposed; (3) no offer to drop specific charges was made; (4) no discussion of sentencing guidelines for the purpose of negotiating a plea occurred--only a generalized discussion to give the suspect an accurate appraisal of his situation occurred; and (5) no defense attorney was retained to assist in the formal plea bargaining process. *See id.* at 450; *Rachlin*, 723 F.2d at 1376-77. LaBrunerie knew that the offenses with which he could be charged were serious. Nevertheless, such knowledge does not transform an admission into a plea discussion. Therefore, we find on the facts of this case, Rule 11 was inapplicable to the statement here at issue.

III. CONCLUSION

Because we find no plea discussion to justify suppression of LaBrunerie's statement under Rule 11(e)(6)(D), we reverse the judgment of the district court.

A true copy.

Attest:

CLERK, U.S. COURT OF APPEALS,
EIGHTH CIRCUIT.

APPENDIX B

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No. 95-4102WMKC

United States of America,	*	
	*	
Appellant,	*	Order Denying Petition
	*	for
	*	Rehearing and
	*	Suggestion
vs.	*	for Rehearing En Banc
	*	
Walker Labrunerie,	*	
	*	
Appellee.	*	

The suggestion for rehearing en banc is denied. The petition for rehearing by the panel is also denied.

October 8, 1996

Order Entered at the Direction of the Court:

/S/

Clerk, U.S. Court of Appeals, Eighth Circuit